SUPREME COURT, U. S.

MAR 1 1974

MICHAEL RODAK, JR., CLERK

# In The
# Supreme Court of the United States

OCTOBER TERM, 1973

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**No. 73-466**

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WILLIAM E. ARNOLD COMPANY,
A Florida Corporation,

Petitioner,

-vs-

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY ANY THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT REPRESENTATIVE THEREOF.

Respondents.

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

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## RESPONDENT'S BRIEF

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# In The
# Supreme Court of the United States

OCTOBER TERM, 1973

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**No. 73-488**

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WILLIAM E. ARNOLD COMPANY,
A Florida Corporation,

Petitioner,

-vs-

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY ANY THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT REPRESENTATIVE THEREOF.

Respondents.

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

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## RESPONDENT'S BRIEF

## QUESTION PRESENTED FOR REVIEW

DOES A STATE COURT HAVE INITIAL JURISDICTION TO ENJOIN AN UNFAIR LABOR PRACTICE WHICH IS ALSO A BREACH OF A COLLECTIVE BARGAINING CONTRACT, WHERE THERE IS NO MANDATORY ARBITRATION CLAUSE CONTAINED THEREIN?

## STATEMENT OF THE CASE

The Respondent herein would accept as being basically correct Petitioner's Statement of the Case presented on pages 4 through 8 of the Brief for the Petitioner.

## ARGUMENT

### INTRODUCTION

The case at bar presents two important areas of Federal labor law for this Court's consideration. One is the question of injunctive relief in breach of collective bargaining agreements, and the other is the federal preemption doctrine as has developed insofar as Sections 7 and 8 of the National Labor Relations Act., 29 U.S.C. §157 and 158.

Both have been considered in prior cases decided by this Court. The question of Federal preemption of this area of the law was discussed in *Garner v. Teamsters etc., Union*, 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228, *Weber et al. v. Anheuser Busch, Inc.*, 348 U.S. 468, 75 S.Ct. 480, 99 L. Ed. 546, and *San Diego Building Trades Council Etc. v. Garmon*, 359 U.S. 236, 79 S. Ct. 773.

The question of injunctive relief for breach of no-strike clauses in collective bargaining contracts was discussed by this Court in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440, wherein this Court expressed the view that the Norris-La Guardia Act, 29 U.S.C. §140, prohibited Federal courts from granting injunctive relief, and then re-evaluated by this Court in *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235, 90 S. Ct. 1583, 26 L.Ed. 2d 199.

In the case at bar, a jurisdictional dispute arose between the Carpenters Union and the Lathers Union as to which should be awarded certain work at the construction site. The Carpenters Union was under contract to the Petitioner, the William E. Arnold Company, the general contractors. One of Arnold's sub-contractors had a contract with the Lather's Union, and being in charge of this particular area of construction, awarded the disputed work to the Lathers Union. A couple of days later, the Carpenters went on strike against the William E. Arnold Co., and the instant case was initiated.

The record is completely silent as to what steps were taken by either the Company or the Respondent Union insofar as attempting to comply, or complying with, the dispute settlement provisions of the no-strike clause contained in Article VI of the collective bargaining contract. The record is also silent as to whether the Lathers Union was willing to participate in these procedures.

Under this set of facts, the Supreme Court of Florida followed its own prior law as set forth in *Scherer and Sons, Inc. v. International Ladies Garment Workers Union Local 415*, 142 So. 2d 290 (Fla. 1962) where it stated at p. 293:

"It must be conceded, however, that where a given

> situation is 'arguably subject' to the prohibitions or protections of the Taft Hartley Act, the Federal government has preempted state action, at least to the extent of conveying to the National Labor Relations Board the initial jurisdiction to determine the applicability of the Federal law."

This policy was affirmed in *Sheetmetal Workers International Association v. Florida Heat and Power, Inc.*, 230 So. 2d 154 (Fla. 1970) which involved a suit for injunctive relief. Thus, this has been the law in the State of Florida for at least the past 12 years.

It is also the law of the United States as enunciated in *Garner*, supra, *Weber*, supra, and *Garmon*, supra.

It can be seen then that the decision rendered by the Supreme Court of Florida did not cause an upheaval of the law in the State of Florida, but rather merely reaffirmed the law as it had been in that state.

## THE QUESTION OF FEDERAL PREEMPTION

In the case presently before the Court, the Florida Supreme Court held that the collective bargaining contract involved herein was an insufficient ground upon which an evasion of *Garmon*, supra, could be justified, stating at (P. App. 11a) 279 So. 2d 300, 302:

> "The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.
>
> In cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of

> the unfair labor practice involved, the Board may decline to assume jurisdiction either by rule of decisions or by published rules adopted pursuant to the Administrative Procedure Act, after which state courts may then assume jurisdiction. In our view, the National Labor Relations Board decision (citing *Laborer's Local 670*, 189 NLRB 98, 76 LRRM 1794) does not have the effect of declining jurisdiction. In that case the Board held only that it cannot decide disputes over union jurisdiction where the parties have agreed to arbitrate those disputes. The case does not hold that the Board cannot or would not: (1) order the parties to arbitrate as agreed, or (2) issue a cease and desist order against a federally prohibited strike arising out of the dispute."

The language of this Court's opinion in the *Garner*, supra, *Weber*, supra, and *Garmon*, supra, cases is very clear. In *Weber* supra, this Court held at 348 U.S. 469, 481:

> "We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State . . . But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Act, may be reasonably deemed to come within the protection afforded by that Act, the State court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

Reaffirming this position, this Court pointed out very carefully in *Garmon*, supra, 359 US 236, 243, 244:

> "Administration is more than a means of regulation; administration is regulation. We have been concerned with conflict in its broadest sense; conflict with a complex and interrelated federal scheme of law, remedy, and administration. Thus, judicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted. When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting. However, due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. . . . . Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act.
>
> ***When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that State jurisdiction must yield*** . . . . . .

> At times it has not been clear whether the particular activity regulated by the States was governed by §7 or §8 or was, perhaps, outside both these sections. *But courts are not primarily tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board."*
> (Emphasis supplied).

There is no question but that the case at bar involved a concededly unfair labor practice – a strike over a jurisdictional dispute that was alleged in the complaint. If the aforementioned principles are to be given credence and weight, it cannot be said that the Florida Supreme Court erred in applying them to the case at bar.

There is also no question but that at first glance there would appear to be a conflict between this decision and the one arrived at by this Court in *Smith v. Evening News Association*, 371 US 195, 83 S.Ct. 267, 51 LRRM 2646.

An important distinction exists, however, in that *Evening News*, supra, was a §301 suit for damages, while the case at bar was strictly one for injunctive relief.

## THE QUESTION OF INJUNCTIVE RELIEF

Respondent would submit that inextricably entwined in the case at bar, and the basis for the decision of the Florida Supreme Court, was the particular relief sought by the Petitioner herein.

The Florida Supreme Court had for some time been con-

cerned with the almost indiscriminate use of ex parte injunctions in labor disputes. Thus, in *Sheetmetal Workers*, supra, 230 So. 2d 154, 158, 159:

> "The use of ex parte injunctions does not help to resolve the uncertainty about the proper role of state courts in labor litigation, and does not serve the ends of Florida state policy. This is true even though economic pressure may be brought against a business by a union; economic pressure is sanctioned by federal legislation, and is therefore protected, . . . . . ."

Again, the Court held that initial determination of jurisdiction must be left to the National Labor Relations Board.

Although it cannot be said that the case at bar had its inception with an ex parte injunction, that *would* have been the case had not the trial court required telephone notice of the impending hearing to counsel for Respondent. (See Appendix, A-37, Order).

As noted above, this Court gave extensive attention to the Norris LaGuardia Act and its effect in both *Sinclair*, supra, and *Boys Markets*, supra. In *Boys Markets*, it was decided that injunctive relief, under very particular circumstances, should be available in labor disputes in spite of the clear wording of the Norris La Guardia Act, for the sound reason that a literal interpretation of the Act, without considering the remainder of Federal labor policy and laws, tended only to frustrate the national labor policy.

It follows, then, that the labor injunction is of national concern. The guidelines for the issuance of injunctive relief in labor relations cases should be uniform throughout the fifty states.

One method of assuring uniformity in the substantive labor law is to vest jurisdiction of disputes of this nature (injunctive relief from an unfair labor practice) within the Federal curtilage. Congress delineated and prohibited unfair labor practices. Congress determined that a national administrative agency should oversee such disputes, and gave that agency the power to effect decisive remedial action. This Court in *Boys Market*, supra, set down precise guidelines for the federal district courts to follow when confronted with a prayer for injunctive relief. This Court pointed out also in *Boys Markets*, supra, that suits of this type are removable to the federal courts if filed in state courts, and that it would be advantageous to the complained of party to have them removed. This Court pointed out in *Boys Markets*, supra, that many states have anti-injunction statutes applicable in labor dispute cases. Considering all of the foregoing, what sense is made, and what purpose served by, allowing the fifty states to proceed along their own lines in developing labor injunction law?

As this Court further pointed out in *Garmon*, supra, 359 US 236 at 242, 243, citing from *Garner*, supra:

> "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies. . . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

Admittedly, *Boys Markets*, supra, dealt with the power of Federal district courts to issue injunctive relief, but the

injunction in labor law having the import that it does should make state injunctive relief in this area a federal concern.

## THE EFFECT OF THE FLORIDA SUPREME COURT DECISION

The Petitioner has characterized the decision of the Florida Supreme Court as having practically demolished collective bargaining in Florida and as being an absolute insult to the national labor policy.

Respondent submits this is simply not the case. As has been pointed out above, this decision did not affect the status of the law in Florida – Florida courts had for years refused jurisdiction of cases that involved unfair labor practices within the National Labor Relation Board's jurisdiction. As a matter of fact, *Garmon*, supra, had made this the law of the United States.

The Florida Court did not, as is argued by the Petitioner, say that no-strike promises in collective bargaining agreements are unenforceable in the state courts. The Florida Supreme Court merely said that if an unfair labor practice is the complained of activity, and the relief requested is an injunction, the National Labor Relations Board should initially determine its jurisdiction. If the Board declines jurisdiction, the state courts would be free to act.

Petitioner completely forgets about the federal remedies afforded, even while citing *Boys Markets*, supra, under which injunctive relief is available in the District Courts. Furthermore, and just as importantly, the Board itself is empowered to prevent unfair labor practices. 29 USC §160 provides:

"(a) The Board is empowered, as hereinafter provided,

> to prevent any person from engaging in any unfair labor practice (listed in Section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise."

Indeed, under Section 10(j) of the Act, 29 USC §160, the Board is specifically empowered to obtain injunctions against those involved in unfair labor policies:

> "(j) The Board shall have power, upon issuance of a complaint as provided in Subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred, or wherein such person resides or transacts business, for appropriate temporary relief or restraining order."

The National Labor Relations Board is one of the larger agencies of the United States, and was created by Congress for the specific purpose of enforcing the National Labor Relations Act.

There is no doubt but that the Board has both the jurisdiction and the machinery to prevent and curtail unfair labor practices. The Board has recently issued several decisions indicating that if the parties have contractually agreed to arbitrate certain matters, and the collective bargaining agreement contains binding arbitration procedures, the Board will voluntarily withhold its authority to adjudicate the dispute, despite the strong wording of §160(a) quoted above that "This power shall not be affected by any other means of

adjustment or prevention that has been or may be established by agreement, law, or otherwise" – despite the fact an unfair labor practice is involved.

Whether this line of decisions is correct or not, it speaks only to binding arbitration clauses–as did this Court's decision in *Boys Markets*, supra. There is no binding arbitration clause in the collective bargaining contract sued upon in the case at bar. This alone would distinguish this case from *Boys Markets*, supra, and the Board's decisions. As this Court pointed out in *Gateway Coal Co. v. Mine Workers*, 85 LRRM 2049 at 2051:

> "No obligation to arbitrate a labor dispute arises solely by operation of law. The law compels a party to submit his grievance to arbitration only if he has contracted to do so."

*Garmon*, supra, is good, sound logic. Congress has obviously acted in this area. Congress further set up an agency to insure that there would be uniformity in our national labor law. If injunctive relief is required, it may be had through the National Labor Relations Board through the Federal court system. There is no logical reason for insisting that the state court system should take initial jurisdiction of suits alleging an unfair labor practice, with the almost certain result of differing decisions.

Petitioners suggest that the Florida Supreme Court decision will have a devastating effect upon the construction industry, and that the no-strike promise has been "rendered meaningless and unenforceable in the Florida state courts." This is preposterous. Aside from the fact that unfair labor practices may be remedied in either proceedings by way of the National Labor Relations Board or through the Federal Courts,

many cases will arise that do not involve unfair labor practices, and these remain enforceable through state courts. There is also the specter of §301 damage suits for contract violations.

While "peaceful settlements" are of course more desirable than court action, not only in the field of labor relations, the fact remains that once the courts are called upon, the dispute has gone past the peaceful settlement stage. The record in this case is silent as to why the Respondents resorted to a strike. It is unclear whether the Petitioner was unwilling to follow any of the possible settlement provisions, or whether the Lathers' union was unwilling to follow the procedures, or whether the Respondents were. In any event, "peaceful settlement" became impossible, and legal action initiated. The only question remaining was what forum. It is submitted that the decision of the Florida court did no harm to, nor did it adversely effect, our national labor policy.

## CONCLUSION

Respondents would suggest that the case at bar is sufficiently distinguished from *Smith v. Evening News*, supra, to justify application of the *Garmon*, supra, doctrine. If it is in conflict, perhaps it is *Smith*, supra, that should be reexamined, and not *Garmon*, supra. The rationale of *Boys Markets*, supra, dictates that labor injunctions should not be issued at random, and it is submitted this principle should be uniform nationally. It may be felt that the strictures of *Boys Markets* should be applied to the states -- if not the Norris La Guardia Act itself.

In the final analysis, however, this case boils down to the question of whether the Florida Supreme Court erred in its decision.

We cannot speculate on what the Court could or would do in similar but not identical situations. The Florida Court decided this particular case on particular facts. The holding is narrow, and it is submitted that what was decided was that (1) in a suit for injunctive relief, (2) from a strike that breaches a collective bargaining contract clause containing no binding arbitration procedure, (3) and that is concededly an unfair labor practice, (4) the state courts of Florida should defer initial jurisdiction until the National Labor Relations Board determines its jurisdiction.

The Petition for a Writ of Certiorari to the Florida Supreme Court should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the Brief of Respondent have been furnished to the following by United States First Class Mail, this 28th day of February, A.D. 1974:

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